

CLEARY GIACOBBE ALFIERI JACOBS, LLC

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Attorneys for Defendants Borough of Red Bank and Stanley J. Sickels

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JASON A. BURKE,
Plaintiff,

vs.

**BOROUGH OF RED BANK; STANLEY
J. SICKELS, officially and individually;
COMMUNICATIONS WORKERS OF
AMERICA (CWA) LOCAL 1075, AFL-
CIO; KEVIN TAURO; JOHN DOE (1
THROUGH 7); AND ABC
CORPORATION (1 THROUGH 3),
Defendants.**

NOTICE OF REMOVAL

TO: CHIEF JUDGE GARRETT E. BROWN, JR. AND JUDGES OF
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ON NOTICE TO:

Bernard M. Reilly, LLC
Bernard M. Reilly, Esq.
90 Maple Avenue
Red Bank, N.J. 07701

PLEASE TAKE NOTICE that Defendants, Borough of Red Bank and Stanley J. Sickels, notice the removal of this action, pursuant to 28 U.S.C. §§ 1331, 1332 and 1441, et seq., from the Superior Court of New Jersey, Monmouth County, Law Division to the United States District Court for the District of New Jersey, and as grounds therefore show as follows:

TIMELINESS OF REMOVAL

1. On or about March 2, 2017, Plaintiff, Jason A. Burke served a Summons and Complaint on the Borough of Red Bank (the “Borough”) and Stanley J. Sickels (“Sickels”) (collectively known as the “Defendants”).

2. The Complaint contains twelve (12) Counts.

3. The Second Count alleges: “the Defendant Borough, [and] defendant Sickels...failed and/or refused to comply with plaintiff’s constitutional rights and terms and requirements of the Collective Bargaining Agreement and related laws with regard to the providing plaintiff a due process hearing prior to his unilateral termination and loss of his property rights in his public employment in violation of his Federal and State Constitutional rights.” (paragraph 2, Second Count).

4. The Seventh Count alleges: “the Defendant Borough and defendant Sickels failed and refused to comply with plaintiff’s constitutional rights and the terms and requirements of the Collective Bargaining Agreement and related laws with regard to the providing plaintiff a due process hearing prior to the summary termination of his public employment on March 11, 2016 and otherwise violating plaintiff’s Federal and State Constitutional rights in his public employment.” (paragraph 2, Seventh Count).

5. The Supreme Court of the United States has affirmatively established that the thirty (30) day period to remove an action to federal court begins to run on the date of service of the Summons. Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 354 (1999).

6. Accordingly, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal has been timely filed within thirty (30) days after the named Defendants were served.

BASIS FOR REMOVAL

7. This action is properly removable under 28 U.S.C. § 1441(a)-(c), because the United States District Court has original jurisdiction in this case under 28 U.S.C. § 1331, which provides as follows:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

8. In the Complaint, Plaintiff alleges that Defendants violated Plaintiff's civil and other rights granted by the Constitution of the United States pursuant to 42 U.S.C. § 1983, and otherwise. See Exhibit A, Complaint, Counts Two and Twelve.

9. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

10. Moreover, this Court has supplemental jurisdiction over Plaintiff's various pendent state law claims pursuant to 28 U.S.C. § 1367.

11. Defendants have not previously sought similar relief.

WHEREFORE, Defendants, the Borough of Red Bank and Stanley J. Sickels, respectfully request this Honorable Court take jurisdiction of this action and issue all necessary orders and process to remove said action to the United States District Court for the District of New Jersey.

Respectfully submitted,

CLEARY GIACOBBE ALFIEIRI JACOBS, LLC
Attorneys for Defendants, Borough of Red Bank
and Stanley J. Sickels

By: /s/Bruce W. Padula
BRUCE W. PADULA

Dated: March 17, 2017

LOCAL CIVIL RULE 11.2 CERTIFICATION

I, Bruce W. Padula, Esq., counsel for Defendant, the Borough of Red Bank and Stanley J. Sickels, certify that the matter in controversy is not the subject of any other action pending in any court nor any pending arbitration or administrative proceeding.

Cleary Giacobbe Alfieri Jacobs, LLC
Attorneys for Defendant, the Borough of Red Bank
and Stanley J. Sickels

By: /s/Bruce W. Padula
BRUCE W. PADULA

Date: March 17, 2017

CERTIFICATION OF SERVICE

I hereby certify that I served copies of this Notice of Removal via email and overnight delivery on this 17th day of March, 2017 on:

Bernard M. Reilly, LLC
Bernard M. Reilly, Esq.
90 Maple Avenue
Red Bank, N.J. 07701

I hereby certify that I served copies of this Notice of Removal via overnight delivery on this 17th day of March, 2017 on:

Clerk, Superior Court of New Jersey
Monmouth County Courthouse
71 Monument Street
P.O. Box 1266
Freehold, New Jersey 07728

By: /s/Bruce W. Padula
BRUCE W. PADULA

Dated: March 17, 2017